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ATTORNEY FOR APPELLANT:

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**IN THE  
COURT OF APPEALS OF INDIANA**

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GARY N. ROARK,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 42A05-0512-CV-739
	)	
VALERIE S. ROARK,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE KNOX SUPERIOR COURT  
The Honorable W. Timothy Crowley, Judge  
Cause No. 42D01-0509-PO-025

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**AUGUST 28, 2006**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARTEAU, Senior Judge**

## STATEMENT OF THE CASE

Respondent-Appellant Gary N. Roark (“Gary”) appeals from the trial court’s decision to grant a permanent protective order in favor of Valerie S. Roark (“Valerie”), Gary’s former wife.

## ISSUE

Gary presents the following issue for our review: whether there is sufficient evidence to support the trial court’s decision to grant the permanent protective order.

## FACTS AND PROCEDURAL HISTORY

On September 7, 2005, Valerie filed a petition for a protective order against Gary pursuant to Ind. Code §34-26-5-1 *et seq.* Valerie alleged that she had been a victim of domestic abuse and stalking by Gary, her former husband. Valerie claimed that Gary had threatened her with physical harm, placed her in fear of physical harm, and had stalked her. The trial court entered an Ex Parte Order for Protection in Valerie’s favor on September 7, 2005. Ind. Code §34-26-5-9(a)(1) allows a trial court to issue a protection order without notice or a hearing under certain circumstances.

The hearing on the permanent protective order was set for September 30, 2005. However, on that date, counsel for Gary appeared and requested a continuance of the hearing. The trial court granted the continuance over Valerie’s objection.

The hearing was rescheduled for October 31, 2005, and was held that day. Valerie, who appeared *pro se*, was questioned by the trial court about the allegations in her petition. The first incident listed in Valerie’s petition involved the allegation that Gary had damaged her mailbox on September 5, 2005, at approximately 11:15 p.m.

However, Valerie's testimony during the trial court's questioning and cross-examination established that Valerie was in bed when her mailbox was struck, that she heard a diesel pickup truck, and that a friend of one of her sons brought the mailbox in to her before he left her house. The next morning, Valerie observed tire tracks she believed were made by a diesel pickup truck with dually configured rear wheels. Gary drove a diesel pickup truck with dually configured rear wheels. Valerie did not witness the destruction of her mailbox. Gary testified that he was at home in bed at the time of the incident and that there are many diesel pickup trucks with dually configured tires in that county.

The next allegation contained in the petition was that Gary drove past a house where a wiener roast was being held by Valerie's family on September 4, 2005. The petition alleged that Gary drove past at a high rate of speed and that there were young children present. Valerie testified that Gary drove past the party at her parents' house several times and at a high rate of speed. Gary testified that he did drive past the party, turned around at the end of the street, and drove past the house again. He disputed the issue of speed, and claimed that he was taunted by one of the attendees at the party.

The third allegation in the petition concerned a telephone call between Gary and Valerie that was made while Valerie was at work. Valerie testified that Gary called her at work and thanked her for turning his children against him. She further testified that he said that all of Knox County was laughing at the Manning family. Manning is Valerie's maiden name. Gary testified that he received a call from Daviess County Hospital where Valerie was employed and that the call was dropped. He testified that he returned the call and spoke with Valerie about payment of his share of medical expenses for the children.

He argued with her about the timeliness of her supplying him with copies of the medical bills regarding their children, and, more specifically, about having to pay a share of the cost of birth control pills for his daughter.

The next allegation in the petition that was discussed at trial involved a letter written by Gary to his youngest son. The allegation in the petition was that Gary had asked for the return of a cell phone given by Gary to that son as a gift. The allegation was that Gary wrote in the letter requesting the return of the phone that the youngest son was just like his brother and sister, and that he wished him luck. Gary testified that he asked for the return of the cell phone because his son would not use it to communicate with him. Gary testified to difficulties in communication with his children.

There was another allegation of a conversation had between Gary and his daughter. However, Gary's counsel's hearsay objection to Valerie's testimony about that conversation was sustained. Gary testified that he had only been to the coffee shop once where the conversation allegedly occurred, and that he was there with his fiancé, not his daughter.

Other allegations that were made in the petition were addressed in much less detail. Most of the allegations had to do with difficulties between the parties in addressing post-divorce custody issues.

After the hearing, the trial court granted the permanent protective order against Gary. Gary now brings this appeal.

## DISCUSSION AND DECISION

Valerie has failed to file a brief in the matter. When an appellee fails to submit a brief, we need not undertake the burden of developing an argument for the appellee. *See Robinson v. Valladares*, 738 N.E.2d 278, 280 (Ind. Ct. App. 2000). Indiana courts have long applied a less stringent standard of review with respect to showings of reversible error when an appellee fails to file a brief. *Id.* Therefore, we may reverse the trial court if the appellant establishes *prima facie* error. *Id.* In those situations, “*prima facie*” is defined as at first sight. *Id.* Yet, when an appellant is unable to meet that burden, we will affirm. *Id.*

The Civil Protective Order Act (“CPOA”), Ind. Code §34-26-5-1 *et seq.*, provides for the granting of relief necessary to bring about a cessation of the violence or threat of violence. The CPOA is construed to promote the protection and safety of all victims of domestic or family violence, and to prevent future domestic and family violence. *Essany v. Bower*, 790 N.E.2d 148, 151 (Ind. Ct. App. 2003). Ind. Code §34-26-5-9(f) allows the trial court to issue the protective order upon a showing by a preponderance of the evidence.

In the present case, Gary challenges the sufficiency of the evidence to support the trial court’s imposition of the order against Gary. In cases where sufficiency of the evidence is at issue upon review, we do not weigh the evidence or resolve questions of credibility. *Tons v. Bley*, 815 N.E.2d 508, 511 (Ind. Ct. App. 2004). We look only to the evidence of probative value and reasonable inferences that the support the trial court’s judgment. *Id.*

For purposes of the CPOA, domestic and family violence includes the offense of stalking. *See Parkhurst v. Van Winkle*, 786 N.E.2d 1159, 1162 (Ind. Ct. App. 2003).

Stalking is defined in relevant part as follows:

Stalking is a knowing or intentional course of conduct involving repeated or continuing harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened and that actually causes the victim to feel terrorized, frightened, intimidated, or threatened.

Ind. Code §35-45-10-1.

In this matter, there was no evidence before the trial court to establish that any of the allegations testified to caused Valerie to feel terrorized, frightened, intimidated or threatened by Gary. She testified that she was worried that Gary might injure one of the younger children attending the wiener roast when he drove by at a high rate of speed. But that did not establish that Valerie was terrorized by Gary's course of conduct. She also testified that when she was driving home after the wiener roast that her youngest son expressed his reluctance to return to his home for fear that his father might come back. However, there was no testimony that Valerie actually felt terrorized, frightened, intimidated, or threatened by Gary's conduct. In fact, most of the controversy involved unpleasant exchanges between Gary and Valerie about issues of custody and support. While perhaps annoying, Gary's communication with Valerie concerned his role as father to the children post-dissolution, and his financial obligations to those children post-dissolution.

The evidence before the trial court was insufficient to support the trial court's imposition of the permanent protective order in Valerie's favor.

Reversed and remanded.

SHARPNACK, J., and BAKER, J., concur.